



Application Number: 09/866,652

Art Unit: 3624

Examiner: Charles Kyle

APPLICANT'S RESPONSE TO FIRST OFFICE ACTION

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Drawings

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A. Acknowledgment of Action

1. Applicant respectfully and gratefully acknowledges Examiner's indication that the "drawings in the application file May 30, 2001 are acceptable". (FOA, page 2, first paragraph)

*Claim Rejections - 35 USC § 103*

2. Applicant respectfully acknowledges Examiner's quotation of 35 U.S.C. 103(a) as forming the basis "for all obviousness rejections set forth in this Office action". (FOA, page 2, second par.)

3. Applicant respectfully acknowledges Examiner's rejection of present claims 1- 25 under 35 U.S.C. 103(a) "as being unpatentable over *Auction This! Your Complete Guide to the World of Online Auctions* by Prince in view of *Flexible Double Auctions for Electronic Commerce: Theory and Implementation* by Wurman et al." (FOA, page 2, third paragraph)

4. Applicant respectfully acknowledges Examiner's argument, given in support of rejection of present claim 1, that "*Auction This* discloses the invention substantially as claimed, including in a business method intended to facilitate flexible terms commodity trading" (FOA, page 2, fourth par.) detailing steps (a) - (e) with at least one page and paragraph citation for each. (FOA, pages 2 - 3)

5. Applicant respectfully and gratefully acknowledges Examiner's admission that "*Auction This* does not specifically disclose that the type of auction can be specified or that the auction is two-way (seller and buyers making proposals)". (FOA, page 4, first sentence of first paragraph)

6. Applicant respectfully acknowledges Examiner's argument that "*Wurman* discloses these features at page 2, first full paragraph and page 3, second full paragraph respectively" (FOA, page 4, first par., second sentence) with regard to the specification of auction type and two-way operation

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undisclosed by *Auction This* as:

It would have been obvious to one of ordinary skill in the art at the time of the invention to have allowed auction-type specification as disclosed by *Wurman* in the auctions disclosed by *Auction This* because this would have provided a means to very specifically describe the proposed auction of *Auction This* in terms of the options described in *Wurman* at page 2, second full paragraph. Further, it would have been obvious to have executed the commodity auction disclosed by *Auction This* using the two-way auction format disclosed by *Wurman* because this would have been a format suitable for the exchange of commodities. (FOA, page 4, first par., from sentence 3)

Further, the compatibility of *Auction This* and *Wurman* is indicated by cites at page 121-122 and page 2, first full paragraph respectively. (FOA, page 4, 2nd par.)

7. Applicant respectfully acknowledges Examiner's statement that: "(a)s to the limitations of counter-bids and response to counter bids, these were well known negotiating techniques within auction and are suggested by *Wurman* at page 2, second paragraph." (FOA, page 4, third paragraph)
8. Applicant respectfully acknowledges Examiner's arguments with regard to claims 2 - 13 including a statement for each claim each relying upon one citation of a reference cited in rejection: citing *Wurman* twice and *Auction This* in the other nine instances. (FOA, pages 4 - 5)
9. Applicant respectfully acknowledges Examiner's argument with respect to claims 14 - 25, that "they recite limitations which describe straight, Dutch and proxy bidding auctions (and that such) bidding features are well known in the auction art, as set forth in the discussion of the claims below." (FOA, page 6, first paragraph)
10. Applicant respectfully acknowledges Examiner's arguments with regard to claims 14, 15, 18, 20, 21, and 24 including a statement for each claim each relying upon at least one citation of a

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reference cited in rejection. (FOA, page 6, second paragraph - page 7, first paragraph)

11. Applicant respectfully acknowledges Examiner's argument with respect to claims 16, 19, 22 and 25 in recitation of the same in full below:

as set forth in the discussions above *Auction This* discloses incremental bidding. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incrementally changed prices with respect to time because this would have 'moved the auction along' as well as creating a feeling of urgency to participants which would increase auction profitability. (FOA, page 7, second paragraph)

12. Applicant respectfully acknowledges Examiner's argument regarding claims 17 and 23 in recitation of the same in full below:

incrementing based on the number of bids received would have brought an auction to a timely end. Rather than waiting for indeterminate time for a next bid, the auctioneer could determine the level of interest in the auction by the number of bids. Fewer bids would indicate a need for incremental change in price which would have expedited the auction. (FOA, page 7, third paragraph)

13. Applicant respectfully acknowledges Examiner's rejection of present claims 26 - 39 under 35 U.S.C. 103(a) "as being unpatentable over *Auction This* and *Wurman* in view of *Forage Buy-Sell Contract* by Palmer." (FOA, page 7, fourth paragraph)

14. Applicant respectfully acknowledges Examiner's argument in support of the present rejection of claims 26 - 32 under 35 U.S.C. 103(a) and further respectfully recites the same in full below:

see the discussions of Claims 33-39 and Claim 1 and consider that similar considerations would apply for the buyer supplied commodity sample in a two-way

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auction. In this case the buyer would have provided a sample as a demonstrator of quality sought rather than provided as with a seller. (FOA, page 8, last paragraph)

15. Applicant respectfully acknowledges Examiner's admission, with regard to present claim 33, that *Auction This* and *Wurman* "do not specifically disclose providing samples of a commodity by a seller." (FOA, page 7, last paragraph, third sentence)

16. Applicant respectfully acknowledges Examiner's argument, with regard to present claim 33, that while *Auction This* and *Wurman* "do not specifically disclose providing samples of a commodity by a seller", "*Palmer* discloses this feature at page 8" (FOA, page 7, last par., third sentence) and:

(i)t would have been obvious to one of ordinary skill in the art at the time of the invention for the seller to provide samples of auction commodities as disclosed by *Palmer* in the auction combination of *Auction This* and *Wurman* because this would have allowed bidders and sellers to adjust commodity pricing to reflect quality as specifically taught by *Palmer* at page 8. See also page 2, first par. and pages 5-8. (FOA, page 7, last paragraph, fourth sentence - page 8 continued paragraph)

17. Applicant respectfully acknowledges Examiner's arguments, with regard to present claims 34 - 39, and further respectfully recites the same in full below:

- c. "*Palmer* discloses that the seller provides a commodity sample at page 8, second and third full paragraphs" (re. Cl.34); (FOA, page 8, first full paragraph)
- b. "It would have been obvious for the auction house to have been a conduit for the seller to buyer sample transfer because this would have allowed the contracting parties to maintain anonymity" (re. Cl. 35 & 37); (FOA, page 8, second full paragraph)
- c. "*Palmer* discloses laboratory testing of commodities at page 8, third full paragraph. It would have been obvious to have posted such results to a web-site because this would have allowed

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all participants to know lot quality and adjusted price accordingly" (re. Cl. 36); (FOA, page 8, third full paragraph)

- d. "It would have been obvious to have provided proportional divisions of a sample to prospective buyers for assessment because this would have assured comparable sub-samples and would have allowed bidders to adjust their bids based on equivalent quality of sub-samples. This is 'comparing apples to apples' - literally" (re. Cl. 38); (FOA, page 8, fourth full paragraph)
- e. "see the discussion of claim 38" (re. Cl. 39) (FOA, page 8, fifth full paragraph).

***Conclusion***

18. Applicant respectfully acknowledges Examiner's citation of five references, including three U.S. Patents, not relied upon in rejection but "considered pertinent to applicant's disclosure." (FOA, page 9, first paragraph)

19. Applicant respectfully acknowledges Examiner's direction of enquiry regarding the first Office action to his office and provision of telephone numbers for: the same, examiner's supervisor, group receptionist and facsimile for "regular" and "After Final communications." (FOA, pages 9 -10)

**B. Submission of Evidence Overcoming Grounds of Rejection*****Claim Rejections - 35 USC § 103***

1. Applicant respectfully submits that steps a) - e) detailed by Examiner in support of rejection regarding present claim 1 with citations of *Auction This*, (FOA, pages 2 and 3), comprise a verbatim recitation of portions of said claim together with said citations corresponding to five of the seven steps, accordingly considered as (a) - (g), in said claim wherein steps a) - d) recited by Examiner correspond to steps (a) - (d) of present base claim 1 and step e) recited by Examiner corresponds to

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step (g) of said claim and steps (e) and (f) of the present base claim, recited below, are omitted:

- (e) posting upon said web site, in association with said listing, counter bids received in response to an open offer and counter offers received in response to an open bid which vary in at least one term from said plurality of terms detailed in said listing; (Claim 1, lines 16 - 18);
- (f) posting upon said web site, in association with said listing, any offer indications by said prospective seller in response to posted counter bids and any bid indications by said prospective buyer in response to posted counter offers signifying a modification of at least one term in said listing; (Claim 1, lines 19 - 21).

2. Applicant respectfully submits that while Examiner's recitation of step d) comprises a full recitation of the fourth step (d) of the present base claim and while Examiner's recitation of step e) comprises a full recitation of the last step (g) of the present base claim, Examiner's recitation of steps a) - c) each omit an important phrase each materially restricting the step concerned; that in the recitation of the first and second steps, (a) & (b), the restrictions that: "the type of auction can be specified in addition to the commodity, quantity, price, and quality desired by a prospective buyer" and "offered by a prospective seller" (Claim 1, lines 4 - 8) are omitted; and the recitation of the third step, (c), omits the restriction of "posting upon said web site a listing ... comprising an open offer of said specified lot when initiated by a prospective seller and comprising an open bid of said specified lot when initiated by a prospective buyer" (Claim 1, lines 9 - 12).

3. Applicant respectfully submits that Examiner's statement, after admission that *Auction This* does not "disclose that the type of auction can be specified or that the auction is two-way", that: "*Wurman* discloses these features at page 2, first full paragraph and page 3, second paragraph respectively" (FOA page four, lines 1 - 4) is in error with regard to disclosure of a 'two-way' auction as presently claimed and that said error is demonstrated with recitation of the pertinent passage cited and recognition of the novel capabilities regarding 'two-way' auction operation provided by the

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language of present base claim 1 as being neither disclosed nor suggested by *Wurman*:

The *continuous double auction* (CDA), matches buyers and sellers immediately on detection of compatible bids. A periodic version of the double auction (sometimes termed a *call market* [12] or *clearinghouse*) instead collects bids over a specified interval of time, then *clears* the market at the expiration of the bidding interval.<sup>2</sup>

<sup>2</sup> We refer to these double auctions as *periodic* to contrast them with the CDA, in which clears are triggered by the reception of new bids. Despite the name, the class of periodic double auctions includes those with aperiodic clear policies, such as those triggered by elapsed periods of inactivity, a randomly generated schedule, or some predefined clearing schedule. (Page 3, second full paragraph, and footnote)

wherein the 'continuous double auction' is seen to comprise an automatic matching of compatible bids and offers operating to clear, as opposed to clearing after an elapsed time, which does describe a dependent feature of the presently claimed invention expressed in claim 2 wherein depositing of the listing follows "matching in all said terms between any offer and any bid both concerned with said specified lot" but which most emphatically does not describe or suggest in any manner the 'two-way' auction method claimed by present claim 1 including the sixth step (f):

posting upon said web site, in association with said listing, any offer indications by said prospective seller in response to posted counter bids and any bid indications by said prospective buyer in response to posted counter offers signifying a modification of at least one term in said listing (Claim 1, lines 19 - 21);

because, quite simply, neither *Wurman* nor any other reference cited by Examiner or known in the pertinent prior art allows modification of terms in a listing in an auction in response to counter bids or counter offers which capability is hence considered to patentably distinguish the presently claimed invention over all of said prior art and comprise both a limitation wholly beyond the ability of the prior art to suggest and a patentable novelty in view of the state of the prior art cited.

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4. Applicant respectfully submits that Examiner's only statement concerning "counter-bids and response to counter-bids", that "these were well known negotiating techniques within auctions and are suggested by *Wurman* at page 2, second full paragraph" (FOA, page 4, third paragraph):

- a. does not address the capability of "signifying a modification of at least one term in (the) listing" in response to counter bids;
- b. does not address "response to posted counter offers", regardless of modification of any term in the listing; and
- c. is in error because *Wurman* does not suggest these 'techniques' as demonstrated with recitation of the passage referenced by citation:

A user can configure the AuctionBot to administer a variety of auction types, by setting parameters controlling the bidding protocol and auction rules. An auction description specifies such attributes as the number and frequency of market-clearing events, restrictions on bidding, revelation of intermediate information, and the policies for determining prices and matching buyers and sellers. Options currently offered in the AuctionBot cover most of the auction traditional types described in the literature, and we continue to extend the system to support a widening variety of auction protocols. (*Wurman*, page 2, par. 2)

as there is no mention of responses to counter bids and no mention of counter offers, much less any mention of response to counter offers..

5. Applicant respectfully submits that in lacking any mention of modifying terms in a listing, or counter offers, or responses to either counter bids or counter offers, *Wurman* can not possibly suggest a 'two-way' auction operation including, in the words of present claim 1, "offer indications by said prospective seller in response to posted counter bids and any bid indications by said prospective buyer in response to posted counter offers signifying a modification of at least one term in said listing" (Claim 1, lines 19 - 21).



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6. Applicant respectfully submits that Examiner's argument that "it would have been obvious to have executed the commodity auction disclosed by *Auction This* using the two-way auction format disclosed by *Wurman* because this would have been a format suitable for the exchange of commodities" (FOA, page 4, first paragraph, last sentence) is unsupported because *Auction This* does not disclose a "commodity auction", as evidenced by the absence of the words 'commodity' or 'commodities' and hence there can be no "suggestion or motivation ... to combine references teachings" (MPEP 706.02(j)) in this manner is simply absent: the 'auction format disclosed by *Wurman*' may well 'have been a format suitable for the exchange of commodities' but the point is moot because *Auction This* doesn't mention commodities.

7. Applicant respectfully submits that the presently claimed invention is clearly restricted to a method in which "the type of auction can be specified in addition to the commodity, quantity, price, and quality" "desired by a prospective buyer" and "offered by a prospective seller" (Claim 1, lines 4 - 8), and that neither *Auction This* nor *Wurman* mention commodities nor allow specification of "commodity, quantity, price, and quality" by both buyer and seller, and therefore neither *Auction This* nor *Wurman* can possibly suggest a 'two-way' commodity auction allowing specification of these terms by both buyer and seller.

8. Applicant respectfully submits, with regard to Examiner's support of rejection concerning present claims 2 - 25, that each said claim is properly dependent upon present base claim 1 in imposing at least one properly defined restriction thereupon, that only *Auction This* and *Wurman* are relied upon in rejection, and therefore these claims are clearly allowable if present claim 1 is allowable, as suggested by the evidence submitted above overcoming rejection of said claim 1 under 35 U.S.C. 103 in view of these two cited references, because: "(i)f an independent claim is unobvious under 35 U.S.C. 103, then any claim depending therefrom is unobvious. *In re Fine*, 837 F.2d 1071, USPQ2d 1596 (Fed. Cir. 1988)" (MPEP 2143.03).

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9. Applicant respectfully submits that Examiner's support of rejection with regard to claims 26 - 32, quoted above in paragraph A.14, provides an illustration of a fundamental misinterpretation of *Wurman* as disclosing a 'two-way' auction of the type presently claimed because, as demonstrated above in paragraph B.3, the 'two-way' auction disclosed by *Wurman* is actually a "continuous double auction" which provides for automatic clearing of a listing in consequence of matching 'compatible' bids and offers, as opposed to some timed interval determining clearance, and there is no 'two-way' auction in the sense of capabilities provided to both buyer and seller by the presently claimed invention: e.g.:

- a. that "the type of auction can be specified in addition to the commodity, quantity, price, and quality" "desired by a prospective buyer" and "offered by a prospective seller" in steps (a) & (b) (Claim 1, lines 4 - 8); or
- b. "posting ... a listing ... comprising an open offer ... when initiated by a prospective seller and comprising an open bid of said specified lat when initiated by a prospective buyer" in step (c) (Claim 1, lines 9 - 12); or
- c. "posting ... with said listing, counter bids received in response to an open offer and counter offers received in response to an open bid which vary in at least one term" in step (e) (Claim 1, lines 16 - 18); or
- d. "posting ... offer indications by said prospective seller in response to posted counter bids and any bid indications by said prospective buyer in response to posted counter offers signifying a modification of at least one term in said listing" in step (f) (Claim 1, lines 19 - 21);

which capabilities are considered both novel with respect to the prior art and similar to the novel capability provided by present claim 26:

- e. "wherein said prospective buyer, in specification of the type of auction, may choose to provide a model of a particular commodity desired for purposes of indicating the quality desired in said open bid"(Claim 26, lines 1 - 3);

which is recognized as being similar to the provision of a sample by a prospective seller, and

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suggested by the 'two-way' auction capabilities (a) - (d) provided by present claim 1 referenced directly above in providing a kind of symmetry with regard to capabilities provided to both prospective buyer and seller: i.e. by the presently claimed invention; not the prior art which lacks any mention of such capabilities and cannot be held to suggest the same because the prior art does not disclose the 'two-way auction' required of the obvious conversion of a seller's sample into a buyer's "model": the prior art cited only discloses automatic clearing of lots consequent to matching bids and offers, which operation is termed a "continuous double auction" which term has been, apparently, misinterpreted as a 'two-way auction' encompassing fundamentally novel elements of the present invention which provide similar capabilities to both buyer and seller.

10. Applicant respectfully submits, with regard to Examiner's support of rejection concerning present claims 33 - 39, that each said claim is properly dependent upon present base claim 1 in imposing at least one properly defined restriction thereupon, that only *Auction This* and *Wurman* are relied upon in rejection of present claim 1, and therefore these claims are properly allowable if base 1 is allowable, as suggested by the evidence submitted above overcoming rejection of said claim under 35 U.S.C. 103 in view of these two cited references and regardless of any third reference cited in combination therewith, because: "(i)f an independent claim is unobvious under 35 U.S.C. 103, then any claim depending therefrom is unobvious. *In re Fine*, 837 F.2d 1071, USPQ2d 1596 (Fed. Cir. 1988)" (MPEP 2143.03).

**D. Summary and Request for Allowance**

1. Applicant respectfully submits that evidence presented above demonstrates that the combined prior art references relied upon in rejection fail to "teach or suggest all the claim limitations" present in present base claim 1 as required by both MPEP 2143.03: "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re*

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*Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) and MPEP 706.02(j):

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

as none of the following limitations to claim 1 are taught or suggested by *Auction This* or *Wurman*:

- a. that "the type of auction can be specified in addition to the commodity, quantity, price, and quality" "desired by a prospective buyer" and "offered by a prospective seller" in steps (a) & (b) (Claim 1, lines 4 - 8); or
- b. "posting ... a listing ... comprising an open offer ... when initiated by a prospective seller and comprising an open bid of said specified lat when initiated by a prospective buyer" in step (c) (Claim 1, line 9 - 12); or
- c. "posting ... with said listing, counter bids received in response to an open offer and counter offers received in response to an open bid which vary in at least one term" in step (e) (Claim 1, lines 16 - 18); or
- d. "posting ... offer indications by said prospective seller in response to posted counter bids and any bid indications by said prospective buyer in response to posted counter offers signifying a modification of at least one term in said listing" in step (f) (Claim 1, lines 19 - 21).

2. Applicant respectfully submits that the evidence above overcomes the present grounds of rejection under 35 U.S.C.103(a) in accordance with 37 CFR 1.111 (b) & (c) by "specifically pointing out how the language of the claims patentably distinguishes" the claimed invention over the references cited and "the patentable novelty which ... the claims present in view of the state of the art disclosed by the references cited" as the sixth step (f) of present base claim 1 has been specifically recited in full, in paragraph B.3 above, as a limitation wholly beyond the suggestion of the prior art "because, quite

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simply, neither *Wurman* nor any other reference cited by Examiner or known in the pertinent prior art allows modification of terms in a listing in an auction in response to counter bids or counter offers which capability is hence considered to patentably distinguish the presently claimed invention over all of said prior art and comprise ... a patentable novelty in view of the state of the prior art cited."

3. Applicant respectfully submits that the evidence presented above demonstrates that the 'two-way' auction disclosed by *Wurman* is actually a 'continuous double auction' wherein clearing is consequent to matching 'compatible' bids and offers, as opposed to "some predefined clearing schedule", (*Wurman*, page 2, footnote 2 for second paragraph), and hence the attribution of characteristics of the presently claimed invention providing similar capabilities to the buyer and the seller:

- a. "*Wurman* discloses these features (that the type of auction can be specified or that the auction is two-way (sellers and buyers making proposals)) at page 2, first full paragraph and page 3, second full paragraph respectively" (FOA, page 4, first sentence of first paragraph);
- b. "(a)s to the limitations of counter-bids and response to counter bids, these ... are suggested by *Wurman* at page 2, second paragraph" (FOA, page 4, third paragraph);

is seen to rely upon a misinterpretation of *Wurman* as disclosing mutual capabilities inherent to the term 'two-way auction' coined by Examiner in description of the 'continuous double auction' of *Wurman* which simply provides for automatic clearing of matching bids and offers, without any mention of 'both buyers and sellers making proposals', and without mention of counter bids or counter offers, much less offer and bid indications by prospective sellers and buyers in response to counter bids or counter offers as set forth in the sixth step of present base claim 1.

4. Applicant respectfully submits that the present response to the first Office action has been timely filed and is fully responsive in accordance with MPEP 714.02 and that all grounds of rejection have been addressed in accordance with 37 CFR 1.111(b).

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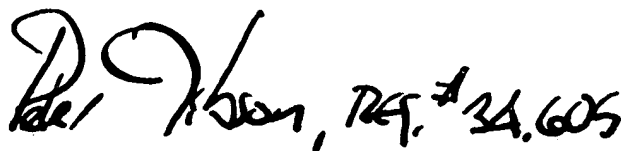
5. Applicant respectfully submits that no objections to the present application were conveyed by the first Office action.

6. Applicant respectfully submits that the grounds for rejecting present base claim 1 have been properly overcome in specifically pointing out:

- a. that the rejection of present base claim 1 under 35 U.S.C. 103(a) fails "(t)o establish *prima facie* obviousness of (the) claimed invention" because "all the claim limitations must be taught or suggested by the prior art" (MPEP 2143.03);
- b. how the language of the claims patentably distinguishes the claims from the references in accordance with 37 CFR 1.111(b);
- c. the patentably novelty presented by the claims in view of the state of the prior art disclosed by the references cited as suggested by 37 CFR 1.111(c) although no claims are amended herein;
- d. how misinterpretation of the prior art results in the present rejection of present base claim 1 under 35 U.S.C. 103(a) being in error in accordance with 37 CFR 1.111(b).

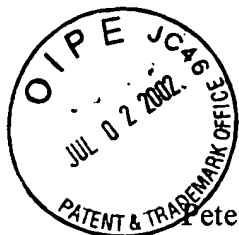
7. Applicant respectfully submits, for all of the reasons presented above, that all the grounds of rejection of present claim 1 have been overcome and the present application is in full and proper condition for allowance which action is further humbly and respectfully requested.

Respectfully yours,



Peter Gibson, Reg. #34,605

Tel. 410/358-5912; Fax -9636



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*[Handwritten signature]*

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Commissioner of Patents  
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Re.: Art Unit: 3624  
Application #: 09/866,652  
Examiner: Charles Kyle

July 2<sup>nd</sup> 2002

Dear Sir/Madam,

Attached please find the materials described below relating to the above identified application for patent filed May 30<sup>th</sup> 2001 in the name of the inventor and applicant, Tommaso Innocenti:

1. Letter of Transmittal on: 1 sheet; (this one)
2. Applicant's Response to First Office Action on: 14 sheets;

Total: 15 sheets.

Please file these materials in the above identified application for patent in response to the first Office action in the name of the applicant, Tommaso Innocenti.

Thank you kindly for your service.

Sincerely,

*[Handwritten signature: Peter Gibson, Reg. #34,605]*

Peter Gibson, Reg. #34,605  
Tel. 410/358-5912; Fax -9636

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